

Serial No. 10/025,299

**REMARKS**

Reconsideration of the present application in view of the following remarks is respectfully requested.

Claims 15-23 are currently pending in the present application, claims 1-14 were previously canceled. In the Office Action dated May 20, 2004 the Examiner indicated that claims 15-21 were allowable over the prior art (See Office Action dated May 20, 2004). The Examiner did not explicitly address claims 22 and 23 in the May 20, 2004 Office Action but it was assumed that these claims were also allowable since they depended from allowable claim 21. The Examiner's statement of reasons for allowance was as follows: The overall claimed combination of an absorbent article that is drapeable, according to applicant's definition as set forth (page 3, lines 12-18) as cited above, and in combination with the specific claimed materials used to make the multi-layer absorbent structure is neither anticipated nor rendered obvious by the prior art of record. (May 20, 2004 Office Action, page 5) It is noted that Carstens USPN 6582411 was cited in the Office Action dated May 20, 2004 and the Examiner determined that the claimed invention according to current claim 15 was allowable over this reference.

Notwithstanding the above indication of allowability, the Examiner current Office Action has withdrawn the above indication of allowability in view of the *same* cited reference. It is respectfully submitted that this is improper. Specifically, it is improper to indicate that an invention is allowable over a cited reference and then determine in a subsequent Office Action that the claimed invention is unpatentable over the *same* cited reference. Accordingly it is requested that the Examiner's rejections be withdrawn.

The Examiner in the present Office Action indicates that Applicant has stated in the specification that cotton underwear is known to have a flexural resistance of less than 35 and therefore, this value is known for an absorbent product. (Office Action, ¶ 3). The relevance of this statement is not understood. One skilled in the art would not equate underwear with an absorbent article, nor does underwear include the various absorbent article layers recited in the claim. Further, it is not seen where Carstens discloses an absorbent article that is drapeable and includes a garment-facing layer that comprises microporous polyethylene.

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In view of the above it is respectfully requested that the Examiner's rejections be withdrawn.

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. Applicants look forward to an early notice of allowance for this application.

Respectfully submitted,

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